

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION

No. 2:08-CR-00016-F-2

UNITED STATES OF AMERICA,)	
)	
v.)	<u>ORDER</u>
)	
CHESTER EUGENE DOWNING,)	
Defendant.)	

This matter is before the court on Chester Eugene Downing's Motion to Dismiss Count Three [DE-235]. Downing argues that he must be released immediately from imprisonment because he was convicted in violation of his Due Process rights under the 5th Amendment to the United States Constitution.

The relief Downing is seeking, to set aside his conviction, is identical to the relief he could obtain through a successful § 2255. For this reason, the undersigned will treat Downing's Motion to Dismiss Count Three as a motion brought pursuant to § 2255. *See United States v. Winestock*, 340 F.3d 200, 207 (4th Cir. 2003) (holding that "a motion directly attacking the prisoner's conviction or sentence will usually amount to a successive application.")

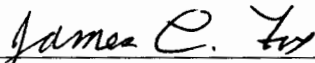
Downing previously filed a § 2255 that was addressed on the merits. Pursuant to 28 U.S.C. § 2244(b)(3)(A), "[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." Downing has not provided any evidence that he has secured authorization from the Fourth Circuit Court of Appeals to file a successive § 2255, and as such, this court is without jurisdiction to consider the merits of the present successive § 2255 motion. Accordingly, Downing's Motion to Dismiss Count Three

[DE-235] will be DISMISSED.

The court further concludes that Downing has not made the requisite showing to support a certificate of appealability. Therefore, a certificate of appealability is DENIED.

SO ORDERED.

This, the 30th day of September, 2013.



JAMES C. FOX
Senior United States District Judge